KUMPULAN GUTHRIE SDN. BHD.

v.

THE MINISTER OF LABOUR & MANPOWER & ORS.

HIGH COURT MALAYA, KUALA LUMPUR
EUSOFF CHIN J
[ORIGINATING MOTION NO. A16 OF 1983]
23 APRIL 1985

LABOUR LAW: *Reference of dispute to Industrial Court - Long delay - Section 20 of the Industrial Relations Act 1967 - No time limit for settlement of representation - Discretion of Director-General.*

The applicant applied for an order of *certiorari* to quash the reference dated 29 March 1983 made by the Minister of Labour and Manpower under s. 20(3) of the Industrial Relations Act 1967 ("the Act") and for an order of prohibition to prohibit the Industrial Court from proceeding or proceeding further in the matter of Industrial Court Case No. 14-018/83.

The grounds of the application were *inter alia* that the Honourable Minister of Labour and Manpower in referring the dispute over the dismissal of the 3rd respondent to the Industrial Court about twenty eight (28) months after the date of dismissal, acted in excess of the powers vested in him under the provisions of the Act. The 3rd respondent was dismissed by the applicant by a letter dated 30 December 1980, which letter was received by him on 5 January 1981. The dismissal was based on the ground that the 3rd respondent had been criminally involved in theft of fertilisers belonging to the applicant.

On 17 January 1981, a formal application was made by the 3rd respondent under s. 20(1) of the Act seeking reinstatement to his employment with the applicant. Several conciliation meetings to settle the dispute were held with the applicant and the 3rd respondent. At the time of the first conciliation meeting, a criminal charge under s. 408 Penal Code was pending against the 3rd respondent. After the last of the conciliation meetings, the applicant on 14 March 1983 informed the Director General of Industrial Relations ("the Director General") that no settlement was possible.

On 18 March 1983, the Director General acting under s. 20(2) of the Act reported the matter to the Minister. On 26 March 1983 the Minister acting under s. 20(3) of the Act, referred the matter to the Industrial Court.

Held:

[1] Although there had been a long delay in the reference of the dispute to the Industrial Court, this delay was not caused by the Director General, in particular, since the parties had agreed to await the result of the criminal case against the 3rd respondent before proceeding further with negotiations. Moreover the parties were keen to settle their case; the 3rd respondent having reduced his offer of settlement from RM55,000 to RM25,000 and the applicant having increased its offer from RM6,000 to RM20,000 in the course of their negotiations.

[2] At conciliation meetings, the Director General or his representative sits in the meetings not as an adjudicator but as a mediator or conciliator.

[3] The effect of the amendment to s. 20(2) of the Act was the removal from that section the period of thirty days from the date of representation made under s. 20(1) of the Act within which the representation should be settled. Therefore the Director General is not bound by

any period of time for the purpose of notifying the Minister. Notwithstanding the words "expeditious settlement thereof" appearing in s. 20(2) of the Act, the parties should be given as much time as is reasonable so long as the Director General is satisfied that there exists a likelihood of an amicable settlement being reached by the parties. The Director General had not acted contrary to the applicant's benefit in having agreed to the prolonged negotiations since the Director General was of the view that the likelihood of a settlement was getting brighter after each conciliation meeting.

[4] Although under normal circumstances the delay of 28 months before reference is made would have been an unwarranted delay, having regard to the applicant's own conduct in contributing to the delay, the Minister had acted correctly and speedily in referring the case to the Industrial Court.

[Application dismissed with costs.]

Case referred to:
Minister of Labour and Manpower and Anor. v. Wix Corporation South East Asia Sdn. Bhd. [1980] 2 MLJ 248

Legislation referred to:
Industrial Relations Act 1967, s. 20(1), (2), (3)
Penal Code, s. 408
Rules of the High Court 1980, O. 53 r. 1(2)

For the applicant - V.T. Nathan; M/s. Shearn Delamore & Co.
For the 1st and 2nd respondents - Nuraini bte Zulkiflee of Attorney General's Chambers
For the 3rd respondent - V. Balasingam; M/s. Joseph & Son

JUDGMENT

Eusoff Chin J:

The applicant Kumpulan Guthrie Sdn, Bhd, applied to this Court for an order of *certiorari* to remove into this Court for the purpose of being quashed the reference dated 29 March 1983 made by the Minister of Labour and Manpower under s. 20(3) of the Industrial Relations Act 1967, and for an order of prohibition to prohibit the Industrial Court from proceeding or proceeding further in the matter of Industrial Court Case No 14-081/83. Leave for this application was granted by this Court on 6 June 1983 under O. 53 r. 1(2) of the Rules of the High Court.

The grounds on which the relief was sought were set out in the affidavit of Mohd. Iqbal bin Mohd. Said who was the Industrial Relations Officers of the applicant, filed in support of the applicants' application for leave under O. 53, r. 1(2) of the R.H.C. They were concisely:

(i) that the Honourable Minister of Labour and Manpower in referring the dispute over the said dismissal of the 3rd respondent to the Industrial Court about twenty-eight (28) months after the date of dismissal, acted in excess of the powers vested in him under the provisions of the Industrial Relations Act 1967;

(ii) that the Honourable Minister of Labour and Manpower misconstrued the relevant provisions of the Industrial Relations Act 1967, and exercised his discretion to refer the matter to the Industrial Court wrongfully and in a manner not in accord with the policy and object of the said Act, and without due regard to the nature of the claim and the relief sought;

(iii) that the Honourable Minister of Labour and Manpower in the exercise of his discretion to refer the matter to the Industrial Court failed to give due weight or gave insufficient weight to the considerations that ought to have weighed with him and or was influenced by considerations which ought not have weighed with him;

(iv) that on the basis of the facts enumerated above, the Honourable Minister of Labour and Manpower in the exercise of his discretion ought not to have referred the matter to the Industrial Court in all the circumstances of this case.

Counsel for the applicant Mr. V.T. Nathan referred to the affidavit filed by the said Mohd. Iqbal and argued that the 3rd respondent was dismissed by the applicant on the recommendation of its Board of Inquiry by its letter dated 30 December 1980. This letter was sent to the 3rd respondent by A.R. Registered Post (Exh. KGSB7 to Mohd. Iqbal's affidavit). The letter said that the 3rd respondent would be paid his salary up to 30 December 1980. The applicant alleged that the 3rd respondent did not make his representation in writing to the Director of Industrial Relations within 30 days of the date of his dismissal (paras 9.4 and 9.5 of Iqbal's affidavit) as required by s. 20(1) of the Industrial Relations Act 1967.

On this issue I would refer to paragraph 10.1 of the affidavit of the 3rd respondent in which he said he had received the applicant's letter of dismissal by his solicitor's letter dated 13 January 1981. On 14 January 1981 he had through his solicitor under s. 20(1) of the Industrial Relations Act made representation in writing to the Director of Industrial Relations Seremban (para 11.1 of 3rd respondent's affidavit, and Exhibits "VNR3" and "VNR4"). A copy of this letter of application made by the 3rd respondent's solicitor to the Director of Industrial Relations under s. 20(1) of the Act was sent to the Personnel Officer of the applicant by registered letter (paragraphs 11.1, 11.2 and 11.4 and Exh. "VNR5" of 3rd respondent's affidavit).

The Director General of Industrial Relations, Mr. Wong Chin Wee in his affidavit sworn on 30 November 1984, at paragraph 4, confirmed that the 3rd respondent had made a formal application on 17 January 1981 under s. 20(1), Industrial Relations Act seeking reinstatement to his employment with the applicant (Exh. "WCW1").

I therefore find that the 3rd respondent had made his representation to the Director of Industrial Relations under s. 20(1) of the Act within the stipulated time of 30 days. The allegations by Mohd. Iqbal for the applicant at paragraph 9.4 of his affidavit that he was not aware of such representation by the 3rd respondent, or that 3rd respondent had not made the representation within the time limited by s. 20(1) of the Act cannot be accepted.

Counsel for the applicant argued that the Minister of Labour and Manpower had acted in excess of the powers vested in him under the Industrial Relations Act because the Minister had taken 28 months to refer the 3rd respondent's dismissal to the Industrial Court. According to Mohd. Iqbal in his affidavit, the Director of Industrial Relations held five conciliation meetings with the applicant and the 3rd respondent. They were on 23 February 1981, 11 September 1982, 20 November 1982, 27 November 1982 and 8 January 1983.

The Director of Industrial Relations at the first meeting had discussed the legality of the domestic inquiry conducted by the applicant which resulted in the dismissal of the 3rd respondent. The dismissal was based on the ground that the 3rd respondent had been criminally involved in theft of fertilisers belonging to the applicant. At the time of this conciliation meeting a criminal charge under s. 408 Penal Code was pending in the Magistrate's Court at Port Dickson, against the 3rd respondent.

According to the applicant the Director of Industrial relations said he would refer the matter to his Director General at Kuala Lumpur, and that meanwhile the parties could put in their written submissions. But according to the Director General of Industrial Relations in his affidavit at paragraph 5, the parties had agreed to defer the matter pending the outcome of the criminal trial. I believe that the parties must have agreed to await the outcome of the criminal trial of the 3rd respondent since at this first conciliation meeting, the applicant and 3rd respondent were fully aware that the criminal trial would take place on 22 April 1981 i.e. a matter of waiting for 2 months. (Para 4 of the Exhibit "VNR3" to the 3rd respondent's affidavit. This was an appeal letter addressed to the Personnel Officer of the applicant. See also Exh. "KGSB-13" to Iqbal's affidavit. Exh. "KGSB-13" is a charge sheet where the date of hearing was written as 22 April 1981). However, the criminal case against the 3rd respondent dragged on and was not disposed of until 29 July 1982. The 3rd respondent's solicitor then wrote to the Director of Industrial Relations on 2 August 1982 informing him of 3rd respondent's acquittal, and requesting the said Director to convene another conciliation meeting. That was the reason for the long delay between the first conciliation meeting and the second conciliation meeting.

At this second meeting on 11 September 1982, both the applicant and 3rd respondent were keen to settle their dispute amicably. It was postponed to enable the 3rd respondent to put forth his proposals for settlement and that the applicant would consider them.

At the third meeting, the 3rd respondent proposed payment by applicant of a sum of RM55,000 but the applicant agreed to settle the dispute with RM6,000. The parties then requested for an adjournment to 27 January 1982.

At the fourth meeting the applicant increased his offer to RM6,500, but the 3rd respondent wanted RM25,000.

These meetings were held at Seremban.

The Director General of Industrial Relations convened further meetings between the parties at Kuala Lumpur on 8 January 1983, 8 February 1983 and on 9 March 1983 the 3rd respondent's offer stood at RM25,000, and the applicant's offer was for RM20,000. The applicant asked for adjournment to 14 March 1983 to make the final decision. On 14 March 1983, the applicant informed the Director General of Industrial Relations that the 3rd respondent's offer had been rejected and that no settlement was possible.

On 18 March 1983 the Director General of Industrial Relations acting under s. 20(2) of the Act reported the matter to the Minister since there was no likelihood of any settlement between the parties.

On 26 March 1983 the Minister acting under s. 20(3) of the Act, referred the matter to the Industrial Court (para. 5 of the Minister's affidavit).

Applicant's Counsel submitted that the Minister had taken 28 months to refer the dispute over the 3rd respondent's dismissal and in so doing he had acted in excess of the powers vested in him under the Industrial Relations Act. I agree that on the face of it there had been a long delay especially between the first conciliation meeting and the second conciliation meeting. But this delay was not caused by the Director of Industrial Relations since the parties had agreed to await the result of the criminal case against the 3rd respondent before proceeding further with the negotiations.

The Federal Court in *Minister of Labour and Manpower and Anor. v. Mix Corporation South East Asia Sdn. Bhd.* [1980] 2 MLJ 248 held that s. 20(2) of the Act does not impose any duty on the Director General of Industrial Relations to decide or determine questions of any kind or to ascertain the law and the facts. He is merely required to deal with the situation in the way he thinks best to get the employer and employee to settle the dispute. Any meeting convened is merely intended for the purpose of bargaining between the employer and employee so that each can see the other's point of view and to settle the dispute themselves. It is not a forum to discuss rights and the law. The Director General or his representative sits in the meeting not as an adjudicator but as a mediator or conciliator. He is not prevented from expressing his views on any matter which arises. Whether or not a settlement is reached is a situation brought about by the parties and not by his assessment of the facts. The result of any meeting is not his decision or determination of questions of any kind. He has no power to compel any party to attend any meeting he has called. If any party does not attend, he may take it that that party requires no settlement. Under s. 20(2) of the Act, he is merely to notify the Minister that there has been no likelihood of settlement.

That Federal Court judgment was in respect of Federal Court Civil Appeal No.67/1978. Section 20(2) of the Act was amended by Act A484/80, and came into force on 30 May 1980. The effect of the amendment was the removal from that section the period of thirty days from the date of representation made under s. 20(1) of the Act within which the representation should be settled. If the Director General was satisfied that the representation was unlikely to be settled within the period 30 days, or if the representation remained unsettled at the end of the period of 30 days, the Director General should notify the Minister accordingly. My view is that the removal of this period of 30 days is to give the parties more time to negotiate with each other, and the Director General is not bound by any period of time for the purpose of notifying the Minister. I am further of the view that notwithstanding the words "expeditious settlement thereof" appearing in s. 20(2) of the Act, the Director General should give to the parties as much time as is reasonable so long as the Director General is satisfied that there exists a likelihood of an amicable settlement being reached by the parties. The period of negotiations between the parties, therefore, is not dictated by the Director General, but by the parties themselves. Where the parties require more time to negotiate, or where, as in the instant case, the parties had agreed to await the result of the 3rd respondent's criminal case before resuming further negotiations, my view is that the Director General acted reasonably in granting the time requested for by the parties as long as he is satisfied that there was likelihood that the parties would reach a settlement on the dispute.

As a mediator, the Director General has to leave the terms of settlement to the parties to decide. Here, the parties at the subsequent meetings were negotiating the amount of compensation which ought to be paid to the 3rd respondent by the applicant. Both parties made their offers and counter offers, until finally on 14 March 1983, the applicant informed the Director General that the 3rd respondents' offer of RM25,000 was rejected and that no settlement was possible. Five days later, on 18 March 1983, the Director General reported the matter to the Minister under s. 20(2) of the Act. On 26 March 1983, the Minister referred the matter to the Industrial Court.

At paragraph 5 of the Minister's affidavit, the Minister had stated that he was aware of the facts surrounding the case, and the steps taken by the Director General and his officers to effect an amicable settlement between the parties. He was satisfied this was a fit and proper case to be referred to the Industrial Court.

Although under normal circumstances I would have thought and therefore would have agreed with the applicant's Counsel that a period of 28 months taken by the Minister before referring the representation to the Industrial Court would have been an unwarranted delay which would be prejudicial to the applicant, I would, having regard to the applicant's own conduct in contributing to the delay consider that the Minister had acted correctly and speedily in referring the case to the Industrial Court. Further, I am of the view that both the applicant and the 3rd respondent were keen to settle their case; the 3rd respondents' having reduced his offer from RM55,000 to RM25,000, and applicant's having increased his offer of settlement from RM6,000 to RM20,000 in the course of their negotiations. I do not consider the Director General had acted contrary to the applicant's benefit in having agreed to the prolonged negotiations since the Director General was of the view that the likelihood of a settlement was getting brighter at each conciliation meeting that he had arranged.

I would therefore dismiss this application with costs.

Also found at [1986] 1 CLJ 566